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January 8, 1974

The Honorable Robert W. Flanders
Treasurer of the State of New Hampshire
State House Annex
Concord, New Hampshire 03301

Dear Mr. Flanders:

By letter dated November 16, 1973 you wrote to me on behalf of the Board of Trustees of the New Hampshire Retirement System, posing two questions about the power of the Board to charge the cost of actuarial studies to the funds of the New Hampshire Retirement System. Your first question asked whether the cost of such studies could be so charged when the study was made "for the purpose of providing a benefit change for the total membership of the system"; if the answer to the first question was yes, you then asked whether the Board had authority to charge the cost of such studies to the System when the studies were "made for only members of a certain group or classification." The relevant statute is RSA 100-A:15, I. (as amended by 1973 Laws 238:1) which provides in part that "the compensation for actuarial services required by the board of trustees in performing the duties required by RSA 100-A:14 shall be a charge upon the funds of the New Hampshire retirement system."

The language of the cited statute is firm in providing that the actuarial services which can be charged against the funds of the System must be those "required" by the Board in performing duties "required by RSA 100-A:14." Legislative history makes it clear that these restrictions upon the scope of actuarial costs which may be charged against the System were intentional. The language I have quoted from 1973 Laws 238 was not in the bill which eventuated in that statute: HB 632 of the 1973 Session provided merely that "the compensation . . . for actuarial services shall be a charge upon

the funds of the New Hampshire retirement system." The language which finally was passed was inserted by a amendment set out in the Journal of the House for May 25, 1973 (see unbound Journal of the House for May 25, 1973, page 1374) obviously as a result of the concern of the chairman of the House Appropriations Committee expressed at a hearing on HB 632 held on May 15, 1973. A portion of the stenographic transcript of that hearing is set out here:

> "Chairman Drake: I have some concern that it may be construed that any actuarial services which may be requested by people who are interested in sponsoring legislation would be a charge against the Retirement System."
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> * * *
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> "Rep. Zachos: Let me say this, Mr. Drake, I don't think it would be except that I know what has been going on and where people bring in these requests for pension and retirement funds and they expect somebody else to provide the actuarial service and pay for it. That is clearly not the intention of this bill. I think it is clear here, but if you want to tighten that up by substituting a different word, I would have no objection."
>
> "Mr. Flanders: My thought would be such actuarial services as the board are required to perform under RSA 180 A:14. That would pin it down."
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> "Chairman Drake: I would really feel more secure if it were spelled out, the specific purposes for which actuarial services would be a charge against the fund."
>
> (Quotations are taken from the certified copy of the transcript which you supplied at my request.)

Subsequently the original reference merely to "actuarial services" as a charge upon the funds of the System was expanded to include the limitation to services required by the Board in performing duties required by RSA 100-A:14 (as amended).

Turning, then, to the questions which you have posed, the first thing that can be said with assurance is that the Trustees have no authority to charge the cost of an actuarial study to the System regardless of its scope solely as an accommodation to individuals or groups outside the Board who desire such a study to be made. Although your two questions do not expressly refer to this possibility, I do note that earlier in your letter to me you pointed out that the Board "recently had several requests to obtain actuarial statements relative to the cost of proposed legislation." To the extent, then, that your questions refer to actuarial studies which have merely been requested by those from outside the Board who desire such actuarial information for the purpose of assessing the cost of legislation which they may seek to have introduced, the questions involve the very factual situations which the sponsor of the bill and the chairman of the House Appropriations Committee intended to avoid. Such charges were definitely precluded by the amendment to HB 632 which I have discussed above.

If, on the other hand, the possible studies with which your questions are concerned are studies which the Board of Trustees in its official capacity desires to have made, then the answer to each of your questions must turn on whether such studies are necessary in order for the Board to perform the duties which RSA 100-A:14 (as amended) requires the Board to perform. Without further and more specific information about the particular studies proposed, I cannot definitively answer the questions about the application of Section 14 (as amended), but I will try to set out some of the considerations involved which may well enable the Board to draw its own conclusion without too much difficulty. I have reviewed each of the numbered subsections of Section 14 (as amended); without coming to any hard and fast conclusion, it appears to me most likely that subsection IX. is the only subsection under which the Board might be authorized in its own right to call for studies of the sort your questions suggest. Subsection IX. includes a requirement that the Board report to the Legislature by January 15 of each odd-numbered year on the functioning of the System as well as "the desirability of any change." As a general rule, I would suppose that the reference to "any change" could include changes with respect to which actuarial studies could be relevant. But I also assume that "change" should be read fairly restrictively for purposes of determining the application of the provision for financing actuarial studies, for the reason that when this latter provision was enacted the Legislature had before it the 1971 and 1973 reports of the Board each of which commenced the section on recommendations by noting that "changes reflecting retirement philosophy are beyond . . . [the

Board's] scope and responsibility." It is proper to assume that the House Appropriations Committee, and the Legislature which subsequently passed HB 632 (as amended) as reported out by that Committee, intended a correspondingly limited scope of possible actuarial studies to be financed from the funds of the System.

Lastly, I probably should note one very practical consideration. If in any given case the Board desires to consider a particular change and to finance from the funds of the System an actuarial study of its consequences, it would have no evidence of record that such a charge against the System's funds was proper unless the minutes of the meeting of the Board disclosed a decision to consider that particular change and later disclosed the decision of the Board either to recommend that change to the Legislature or to make no such recommendation.

Yours sincerely,

David H. Souter
Deputy Attorney General